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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Communications Assistance for
Law Enforcement Act

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CC Docket No. 97-213

To: The Commission

COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group ("RTG"), by its attorneys, hereby respectfully submits these Comments in response to the *Notice of Proposed Rulemaking* ("NPRM"), released by the Federal Communications Commission ("FCC" or "Commission") on October 10, 1997, in the above-referenced proceeding. These Comments oppose the imposition of the proposed deadline for filing internal security policies and procedures, and urge the Commission to adopt technical standards, without which no other compliance date associated with the implementation of the Communications Assistance for Law Enforcement Act ("CALEA") can be relevant. RTG additionally argues that the Commission must order an extension of CALEA's October 25, 1998 capability requirements compliance date.

I. STATEMENT OF INTEREST

RTG is an organized group of rural telephone companies whose purpose is to advocate on behalf of rural telecommunications providers. All of RTG's members are "telecommunications carriers" subject to compliance with CALEA, and as such are qualified to file comments in this proceeding.

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II. DISCUSSION

A. **The Commission's Proposals for the Submission of Internal Security Policies and Procedures Must Be Tailored to Accommodate Small and Rural Telephone Companies and Subject to a Meaningful Compliance Date**

The Commission correctly notes that many of the small and rural telecommunications carriers subject to CALEA requirements may never be asked to conduct electronic surveillance. Therefore, the burden of any mandatory record keeping duties and the creation of internal policies and procedures manuals governing the manner in which authorized interceptions will be carried out should be kept to a minimum. The Commission recommends a reduced reporting burden for carriers with annual operating revenues below \$100 million, adjusted for inflation pursuant to the indexed revenue schedule at 47 C.F.R. § 32.9000. RTG suggests that this demarcation point encompasses too large a field of carriers for the adoption of feasible reporting and documentation regulations. Many carriers that fall below the \$100 million threshold are large enough, or geographically situated in such a way, that they are more apt to be called upon to assist law enforcement authorities in the conduct of authorized communications interceptions than small and/or rural telephone companies, as these are defined by the Commission.

RTG proposes that there should be a dedicated provision for small and rural carriers, *e.g.*, those telecommunications carriers with annual gross revenues below \$40 million¹, or in the case

¹ This is the frequently adopted annual revenue threshold for determining "small business" preferences in FCC auctions. *See* 47 C.F.R. § 24.320(b)(1)(i) (narrowband PCS); 47 C.F.R. § 24.720(b)(1) (broadband PCS); 47 C.F.R. § 26.4 (General Wireless Communications Service); 47 C.F.R. § 27.210(b)(1) (Wireless Communications Service); 47 C.F.R. § 101.1112(c) (Local Multipoint Distribution Service).

of local exchange carriers (LECs), those LECs with fewer than 50,000² access lines, requiring that the carrier place in its business files a certification that it understands that it is subject to the provisions of CALEA and is prepared to comply with CALEA's record keeping requirements in the event that it is called upon to assist in an authorized interception. Associated with this documented certification would be a list of the data and information that the carrier is required to provide in the event that an authorized interception is carried out. Keeping the certification and compilation of necessary background data and information together in one place ensures that the carrier can rapidly respond to a request for interception assistance and provide law enforcement officials with all the necessary preliminary information required to conduct lawful and well-documented electronic surveillance. Small and rural carriers, exemplified by RTG's members, have relatively few employees compared with the majority of carriers that fall beneath the \$100 million revenue threshold. While it may be important for a carrier with a large number of employees, *e.g.*, 50 or more, to designate and record in advance of electronic surveillance requests the names and titles of employees and officers designated to participate in lawful interception activities, such record keeping is superfluous for small companies where the daily activities of each employee is well monitored. A small and/or rural carrier should be permitted to select the employee(s) who shall assist in the conduct of electronic surveillance at the time a request for assistance is made. Once a request is made, the employee(s) can be identified to the appropriate law enforcement authorities and given any necessary instructions to effectuate the interception(s).

² LECs with fewer than 50,000 access lines have already been defined as rural telephone companies. *See* 47 U.S.C. § 153(37)(B) (definition of "rural telephone company").

Regardless of the type of security and record keeping policies the Commission adopts for small and rural telecommunications carriers, the proposed deadline of 90 days from the effective date of the rules adopted in this proceeding for the submission of such policies for review is premature. At this time, there are neither technical standards nor final capacity requirements in place for any telecommunications carriers. The Commission is putting the cart before the horse when it expects carriers to devise internal implementation policies and procedures for an intermittent function that is, as of yet, without complete parameters. No carrier currently knows the exact extent of the impact CALEA requirements will have on its individual operations until technical standards and mandatory capacity requirements are announced. The internal policies and procedures formulated by carriers now would be speculative at best, and probably require modification to comport with actual CALEA obligations once they are known. Therefore, submitting policies and procedures for review this early in the process of implementing CALEA would be an inefficient administrative burden. The Commission should refrain from setting any deadline for submission of compliance documentation until after both technical standards and final capacity requirements are released.

B. The Commission Should Assume Its Responsibility to Establish Technical Standards for the Implementation of CALEA'S Capability Requirements

Under Section 107 of CALEA, if technical requirements or standards are not issued by the industry, parties may petition the Commission to establish the standards. In July, 1997, the Cellular Telecommunications Association of America ("CTIA") filed a petition with the Commission requesting that the Commission adopt, as the CALEA technical standard, the

standard developed by the Telecommunications Industry Association (“TIA”) and modified by TIA to incorporate more than 90 percent of the particulars insisted upon by the Federal Bureau of Investigations (“FBI”) in its parallel Electronic Surveillance Interface (“ESI”) document.

CTIA’s petition followed 30 months of concerted effort on the part of the telecommunications industry to meet its obligation under CALEA to set an industry technical standard for electronic surveillance. Despite CTIA’s repeated attempts to cajole the FBI into reaching a consensus on the details of the standard, including TIA’s total rewrite of the standard to incorporate nearly 100 percent of the FBI’s surveillance requirements, a standard has yet to be adopted. The Commission is well aware that “[t]he absence of industry standards . . . does not relieve a carrier of its assistance capability obligation.”³ As the October 25, 1998 CALEA compliance deadline looms less than a year away, carriers face fines of \$10,000 per day for each day they are not in compliance.

The standard that TIA possesses and CTIA encourages the Commission to adopt meets 100 percent of the requirements of CALEA. RTG is at a loss to fathom the Commission’s refusal to address the issue in this *NPRM* and adopt the proffered standard. The Commission’s discussion of the technical standard makes no mention of the ongoing struggle the industry is experiencing with law enforcement agencies and the FBI, but merely states that it will defer addressing the issue due to the “ongoing nature of the standards-setting process.” The fact is that the standards-setting process is at a dead stand-still, and the clock is running on the compliance deadline.

³ 47 U.S.C. § 1006(a)(3)(B).

Section 301(a) of CALEA requires the Commission to “prescribe rules as are necessary to implement the requirements of the Communications Assistance for Law Enforcement Act.”

Technical standards are necessary before telecommunications carriers can configure their systems to accomplish the types of surveillance functions law enforcement agencies require, or even assess whether meeting CALEA’s requirements is reasonably achievable. Therefore, the Commission should be required to step in and settle the stalemate by setting the standard. It is now so late in the implementation period for CALEA that even if a standard were adopted today, the October 25, 1998 compliance deadline would have to be extended. The sooner the Commission establishes a standard, the sooner telecommunications carriers will be able to assist law enforcement authorities in their interception exercises.

C. The Commission Must Set a New Compliance Date for Completion of CALEA Implementation

There is no question that telecommunications carriers, regardless of size, will find it impossible to meet their CALEA obligations by October 25, 1998. Currently there are no technical standards in place, and the FBI has yet to release the final capacity requirements that will enable carriers to assess whether they are capable of meeting CALEA’s requirements at all. Under Section 107(c) of CALEA, a carrier may petition the Commission for an extension of time in order to comply with the assistance capability requirements of Section 103 of CALEA. The last date a carrier may request an extension is October 24, 1998, and the Commission is authorized to extend the compliance deadline to October 24, 2000 if it finds that a carrier’s ability to meet its Section 103 requirements is not reasonably achievable.

According to CTIA, the FBI has indicated to Congress that from the time of adoption of a technical standard to its availability in the field approximately 18 months must elapse. With less than a year remaining before the October 25, 1998 deadline, and critical factors such as a technical standard and capacity requirements still outstanding, it is likely that no carrier will find meeting CALEA's requirements reasonably achievable. The Commission declines to extend the October 25, 1998 compliance deadline at this time on the grounds that "it is not clear whether requests for extension of time of the Section 103 compliance deadline will be forthcoming." RTG submits that the question is not whether there will be extension requests, but of what magnitude! The Commission should avoid the administrative headache of dealing with hundreds of individual extension requests that undoubtedly will begin to arrive shortly after the technical standard and capacity requirements are established, and simply set a new compliance deadline for CALEA. RTG proposes that the Commission change the deadline for compliance to October 24, 2000 -- the date of the longest available extension. In the alternative, the Commission should set the compliance date at two years from the date that the last piece of outstanding information is established, *e.g.*, the later of the adoption of technical standards or final capacity requirements.

III. CONCLUSION

The effective implementation of CALEA has widespread implications for the efficient functioning of law enforcement, the protection of the public, and the reasonable operation of telecommunications services. The telecommunications industry has exceeded its duties in attempting to make this implementation a smooth and cooperative process, and now is in need of assistance from the Commission. The implementation process of CALEA is wrought with

obstacles that make compliance extremely burdensome, if not impossible, even for large telecommunications carriers. Any problem encountered by a medium or large carrier can be multiplied tenfold for a small and/or rural carrier. RTG respectfully requests that the Commission greatly diminish, if not eliminate, reporting and record keeping requirements for small and rural carriers, and defer required submission of any such documentation until after all the necessary elements of CALEA are established. RTG also requests that the Commission assume its authority to adopt a technical standard for implementing CALEA, and extend the compliance deadline for completion of CALEA implementation well beyond the current deadline of October 25, 1998.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP

By: Caressa D. Bennet

Caressa D. Bennet
Dorothy E. Cukier

Bennet & Bennet, PLLC
1019 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 530-9800

Its Attorneys

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